In 1912 United States Circuit Courts were abolished and the District Courts given jurisdiction over all cases involving over $3000 arising under the laws and constitution of the United States.[10] They were also given jurisdiction "of all suits and proceedings arising under any law regulating commerce." Section 256 of the revised Judiciary Act contains an enumeration of cases in which the District Courts are given jurisdiction exclusive of the State courts.[11] "Suits and proceedings arising under any law regulating commerce" are not included in this list, and, under the maxim "expressio unius exclusio alterius est," the State courts must have concurrent jurisdiction as to all cases omitted from the list. Accordingly, it would seem that the State courts have jurisdiction over all suits invoking the rule of liability of the 20th section. Moreover, it may even be questioned if such an action may be said to "arise under any act to regulate commerce"; the 20th section merely defines the extent and duration of the initial carrier's liability; the action "arises" out of the old common law right against a carrier. That the State courts have concurrent jurisdiction is further borne out by the fact that the United States Supreme Court recently reversed on writ of error[12] the decision of the Supreme Court of Errors of Connecticut[13] refusing to take jurisdiction under the Federal Employers' Liability Act.[14] R. W. M.

Criminal Law—Arraignment—Plea.—In the case of People v. Tomsky,[1] the defendant was not arraigned, nor did he plead. The trial proceeded without objection as if a plea of not guilty had been entered, and the defendant was convicted. This conviction was sustained by the District Court of Appeal. The prior decisions in California[2] hold the want of a plea fatal and are in accord with the numerical weight of authority, although there are well considered cases cited in the principal case holding that the defendant waives his right by going to trial without objection.[3] It is hard to see of what substantial right the

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[10] Act of March 3, 1911, Sec. 24, Fed. Stats. Ann. Supp. (1912), p. 139.

[11] Act of March 3, 1911, Sec. 256, Fed. Stat. Ann. Supp. (1912), p. 288.

[12] Second Employers' Liability Cases (1911), 223 U. S. 1.

[13] Act of April 22, 1908, 35 Stat. 65.

[14] Hoxie v. N. Y. N. H. & H. Ry. Co. (1909), 82 Conn. 352. 73 Atl. 754; Mondou v. Same, 373, 73 Atl. 762.

[1] (Dec. 18, 1912), 15 Cal. App. Dec. 878.

[2] People v. Corbett (1865), 28 Cal. 328; People v. Gaines (1877). 52 Cal. 479; People v. Monaghan (1894), 102 Cal. 229, 36 Pac. 511.

[3] See also United States v. Molloy (1887), 31 Fed. 19; People v. Tower (1892), 63 Hun. 624, 17 N. Y. Supp. 395; Hack v. State (1910), 141 Wis. 346, 124 N. W. 492 (overruling the prior Wisconsin case). The authorities sustaining a waiver were not called to the attention of the court in People v. Monaghan, supra.

defendant was deprived in the principal case. He was represented by counsel throughout. In a criminal proceeding all defences to the merits except the jeopardy pleas come in under the plea of not guilty, so that there is no reason for the application of the technical rule of civil pleading that the record must show the issue. The defendant had the full benefit of a plea of not guilty.

There is not much authority on this point in England. One early case was reversed for want of a plea of record;[4] but there has been a tendency to distinguish this precedent.[5] In Mortimer's case, relied on by Hale,[6] there was no trial at all; nor was the defendant present. The earls and barons came in Parliament before the king, and said they knew the defendant was a notorious traitor and condemned him to a traitor's death.[7] Arraignment and plea were usually very substantial rights in the times when the preliminary examination was secret, the witnesses for the prosecution not disclosed, no compulsory process for defendant's witnesses, almost no rules of evidence and no counsel. With the modern changes in criminal trials, the plea has become a mere form which should be waived by going to trial without objection.

The Court of Appeal does not profess to overrule the earlier California cases, but places its decision on the recent amendment to the constitution.[8] This amendment is performing a service in enabling the court to free the law from the technical rulings of the sixteenth century, that have been blindly followed ever since, despite the change in conditions. The amendment, however, seems to make it necessary for the Appellate Court to read the entire record to determine whether substantial justice has been done though the fault complained of is merely a technical one. This seems too great a burden to impose on an overworked court. A. M. K.

Criminal Law—Place of Trial—Jury of Vicinage.—The defendant committed bigamy in San Diego county, was arrested in Los Angeles, and tried in the latter county under Section 785 of the Penal Code which gives jurisdiction in bigamy cases either where the crime was committed or where the defendant was apprehended. The District

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[4] Chitty, Criminal Law, star page 418 (1869), 3 Mod. 265.

[5] Hawkins, Pleas of the Crown, Vol. 2, p. 435; Chitty, supra.

[6] Hale, Pleas of the Crown, Vol. 2, p. 218.

[7] (1330), 1 State Trials 51.

[8] Article VI, Sec. 4½. No judgment shall be set aside, or new trial granted in any criminal case on the ground of misdirection of the jury or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.